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SUBJECT: KAZAKHSTAN: COURT UPHOLDS ZHOVTIS' CONVICTION

REF: (A) ASTANA 1470  
(B) ASTANA 1487  
(C) ASTANA 1494  
(D) ASTANA 1512  
(E) ASTANA 1538  
(F) ASTANA 1816

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11. (U) Sensitive but unclassified. Not for public Internet.

12. (SBU) SUMMARY: On October 20, the Almaty Oblast Court upheld the conviction and four-year sentence of prominent human rights defender Yevgeniy Zhovtis on charges of vehicular manslaughter. Over 100 observers attended the hearing, including representatives of civil society, opposition political parties, local and international media, and the diplomatic community. Civil society activists condemned the decision and referred to Zhovtis as a "political prisoner." Zhovtis will be transferred within a week from the pre-trial detention in Taldy-Korgan to a minimum-security facility in Eastern Kazakhstan. His defense team will request that a judicial panel review the case for procedural violations, although one of his lawyers expressed doubt that the panel will change the decision. The Embassy will release a statement on the case at the opening of business October 22 (full text in paragraph 8). END SUMMARY.

APPEAL DENIED

13. (SBU) On October 20, the Almaty Oblast Court upheld the conviction and four-year sentence of prominent human rights defender Yevgeniy Zhovtis on charges of vehicular manslaughter (ref A). Zhovtis was not present at the appeal. His defense team had filed a petition for him to be present, but the court contended that his presence at the appeal hearing was not obligatory since the prosecution was not seeking a harsher sentence. The hearing was attended by the victim's mother, who made an official statement that she had forgiven Zhovtis and presented a notarized letter to the effect. During the hearing, the defense petitioned to dismiss the original verdict for trial irregularities, to order a new technical-expertsreview of the accident, and to have Zhovtis present at the hearing. The defense also urged the court to reconsider Zhovtis' four-year sentence in light of the fact that the victim's mother forgave him. The judge rejected most of the defense's

motions, but did include the victim's mother's statement into the record. Following a three-hour hearing, the judge ruled to leave unchanged the lower court's decision.

#### HEARING DRAWS LARGE CROWD

¶4. (SBU) The appeal hearing drew over 100 observers, including leading civil rights activists, local and international media, and the head of the opposition party Azat and two of his deputies. Representatives of diplomatic missions of the United States (Almaty PAO and P/E LES), European Commission (EC), Germany, and France, including France's Ambassador-at-Large for Human Rights Francois Zimeray, were also present, as well as Human Rights Watch's deputy director for Europe and Central Asia Rachel Denber, who flew from New York to Kazakhstan specifically for the appeal. The group of observers was too large to fit into the court room, and only about 40 people, including representatives of foreign missions and international media, were able to observe the hearing. Following the court's decision, civil society activists organized an impromptu press conference in front of the court house, condemning the court decision and calling Zhovtis "a political prisoner." France's Ambassador Zimeray told BBC and Agence France Presse (AFP) that he was "very disappointed [with the decision] because we expected a more fair discussion from a country which has the ambition to chair the Organization for Security and Cooperation in Europe (OSCE), a prominent democracy and human rights organization." Roza Akylbekova of Zhovtis' Human Rights Bureau recounted to the press how she and the victim's mother were stopped several times by road police while they were driving to the court, in what she believes was an attempt to prevent the victim's mother from testifying.

WHAT NOW?

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¶5. (SBU) Vera Tkachenko, a member of Zhovtis' defense team, told us on October 21 that within a week, Zhovtis will be moved from the pre-trial detention center in Taldy-Korgan to minimum-security penal colony in Ust-Kamenogorsk, in Eastern Kazakhstan. She told us that until recently, the only such minimum-security colony was in Aqmola oblast, near Astana, but that "the authorities quickly reclassified" an existing colony in Ust-Kamenogorsk, ostensibly to keep Zhovtis "away from undue attention."

¶6. (SBU) Tkachenko explained that under Kazakhstani legislation, the oblast-level courts are the courts of final instance for lesser crimes like Zhovtis', and that these cases cannot be appealed to the Supreme Court. The law does allow, however, for the defense to request a judicial panel review (obzornaya komissiya) to look for any procedural violations in the case. Tkachenko said Zhovtis' defense team will file the request for the review very soon. She noted, however, that the panel can only look at procedural violations and cannot reassess the merits of the case, and she expressed doubt that the panel will overturn the court's decision. Theoretically, the panel has one month to decide whether to grant the defendant's request for a review. However, the one-month term is counted from the day the court receives all the necessary documents, so the decision could be dragged out while the panel awaits the paperwork. Once the decision for review is granted, the panel has another month to review the case and issue its decision.

#### CIVIL SOCIETY "SHOCKED"

¶7. (SBU) Several civil society activists told us that they were "flabbergasted" and "shocked" by the court decision. Freedom House's country director Iva Dobichina said she was "deeply disappointed Kazakhstan would take such a step on the eve of its OSCE chairmanship." She urged the international community "not to stay silent, to make sure this case does not go away." Vera Tkachenko said the court case "was an eloquent example of what is going on in Kazakhstan." Human Rights Watch said the verdict was "a terrible miscarriage of justice." Sergei Duvanov, an independent journalist, told us he was "disappointed with the West, particularly OSCE, for the support of the Nazarbayev regime." He also said that Zhovtis' supporters will not mount a new wave of protest actions

(ref F), because "they obviously proved to be ineffective."

EMBASSY'S STATEMENT

18. (SBU) The Embassy plans to release the following statement on the case at the opening of business October 22:

BEGIN STATEMENT TEXT:

The United States Embassy in Astana notes with concern that on October 20 the Almaty Oblast Court in the city of Taldy-Qorghana upheld the vehicular manslaughter conviction and sentencing to four years of imprisonment of Yevgeniy Zhovtis, head of the non-governmental organization, Human Rights Bureau. After the original trial in September, there were credible allegations of procedural flaws in that trial, and the appeal hearing failed to address those concerns.

We urge the government of Kazakhstan to pursue the upcoming procedural review of the case fully in accord with Kazakhstani law and its commitment to international judicial standards.

END TEXT

18. (SBU) COMMENT: The court's decision to uphold Zhovtis' conviction shocked many in the civil-society and diplomatic communities. As late as last week, several civil-society activists told us they were receiving encouraging signs from the authorities that Zhovtis' sentence would be amended and/or suspended. Many of the same people were at a loss today what to do next. On October 20, the Ambassador privately told Deputy Foreign Minister Kairat Umarov in no uncertain terms that this court decision is a major stain on Kazakhstan's record and that it will have wide

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reverberations in Washington, Brussels, and Vienna (septel). END COMMENT.

HOAGLAND